

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON ALLEN MAGGARD,

Petitioner,

No. CIV S-04-2196 GEB KJM P

vs.

JEANNE S. WOODFORD, et al.,

Respondents.

ORDER

On November 28, 2005, the District Court vacated its prior order adopting this court's findings and recommendations of June 22, 2005 and remanded the case to this court for further consideration in light of Rhines v. Weber, 544 U.S. 269, 125 S.Ct. 1528 (2005). In Rhines, the Supreme Court recognized that a district court has the authority to stay a "mixed" petition for a writ of habeas corpus in order to permit a petitioner to exhaust his unexhausted claims in state court. Such a stay is appropriate when petitioner shows good cause for his failure to exhaust earlier and merit to the claims he is seeking to exhaust. Id. at 1535.

In the first amended petition, petitioner raised six issues: the trial court erred by admitting testimony of the pursuing officer concerning petitioner's mental state; the use of CALJIC No. 12.85 deprived petitioner of his right to have the jury determine every element of the offense; a more specific unanimity instruction was required because of the differing mental

1 states in the charged offense; California Vehicle Code section 2800.2 is unconstitutional; there
2 was insufficient evidence of intent supporting the conviction for reckless evading; and there was
3 insufficient evidence to support the convictions for assault with a deadly weapon. Am. Pet.
4 at 5-6. In light of respondent's motion to dismiss the petition, petitioner conceded he had
5 exhausted only claims one and three of that petition: permitting the pursuing officer to describe
6 petitioner's mental state was error, and the unanimity instruction was inadequate in this case.

7 In the findings and recommendations of June 22, 2005, this court found
8 petitioner's request for a stay of proceedings to be premature. In light of Rhines, however, this
9 court may consider the stay request without requiring petitioner to file a new document
10 containing only exhausted claims.

11 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of this
12 order, petitioner shall file a renewed request for a stay of proceedings in conformance with
13 Rhines v. Weber, 544 U.S. 269 (2005). Respondent shall have thirty days after the filing of the
14 request to file opposition, if any.

15 DATED: April 13, 2006.

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18 UNITED STATES MAGISTRATE JUDGE
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